

Gillard (Migration) [2019] AATA 2934 (23 May 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mrs Nalini Nita Gillard
VISA APPLICANT:	Mr Kunwar Pal Singh
CASE NUMBER:	1718193
DIBP REFERENCE(S):	BCC2015/1846194
MEMBER:	David Barker
DATE:	23 May 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa: • cl.309.211 of Schedule 2 to the Regulations • cl.309.221 of Schedule 2 to the Regulations.

Statement made on 23 May 2019 at 5:20pm

1. CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional)) – concern about reliability of certain evidence – language barrier – arranged marriage – relatives’ evidence credible – totality of evidence considered – compatible life goals – genuine and continuing spousal relationship – mutual commitment to shared life as husband and wife to exclusion of others – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65, 359AA, 376

Migration Regulations 1994 (Cth), r 1.15A, Schedule 2, cls 309.211, 309.221

CASES

DAO16 v Minister for Immigration and Border Protection [2018] FCAFC

He v MIBP [2017] FCAFC 206

Re MILGEA and Dhillon [1990] FCA 144

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 27 July 2017 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 27 June 2015 on the basis of his relationship with his sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 because they were not satisfied on the evidence that the applicant is a spouse, as defined under r.1.15A of the Act, of a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
5. The review applicant appeared before the Tribunal on 1 May 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant and the following witnesses: Ms Amrita Gillard, Mr Maninder Singh, Ms Loveleen Kaur and Ms Rawinder Kaur.
6. The review applicant was represented in relation to the review by her registered migration agent.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

8. BACKGROUND

9. The visa applicant is a national of India and is 37 years of age.
10. The review applicant was born in Fiji and is 51 years old. She came to Australia in August 1989 and is a permanent resident.
11. Information provided by the parties indicate that they were introduced to each other by Mr Maninder Singh, brother of the visa applicant, in February 2015 following on the review applicant asking Mr Maninder Singh if he knew of a good, honest and hard-working man who may be interested in marrying her.
12. The parties first met on 7 April 2015 in India and held a ring ceremony three days later on 10 April 2015. The parties registered their marriage with the Indian authorities on 3 June 2015.
13. The delegate's decision record, a copy of which the review applicant provided to the Tribunal, indicates the delegate was not satisfied that either party had made a strong financial commitment to each other, nor that they had provided sufficient evidence to demonstrate they had made efforts to meet with each other since the marriage in 2015. The delegate was not satisfied the evidence demonstrated the parties represent themselves as a couple to family or friends, or that they had provided credible evidence of ongoing communication with each other. Further to this the delegate raised a number of concerns

arising from a site visit by Australian immigration official to the visa applicant's home village in November 2016. These concerns included that the visa applicant's father had very limited knowledge about the review applicant and when asked about the difference in the parties' ages, he had indicated this was not of concern to him as the marriage was only arranged for the purpose of his son obtaining permanent residency. Amongst other concerns raised by the delegate was that the visa applicant's father indicated the parties' wedding function was attended by between 50 and 60 people, whereas when interviewed, his sister stated that the wedding was attended by between 10 and 12 people. The delegate noted that the visa applicant's sister could not provide the name of the review applicant but was aware that her brother had married a foreigner.

14. Department of Immigration records indicate that the review applicant has travelled from Australia on the following dates since the parties' wedding in June 2015:

Depart Date	Arrival Date
27 September 2017	13 October 2017
10 December 2017	30 December 2017
25 March 2018	9 April 2018
11 April 2018	26 August 2018

15. Departmental records provide the following information about the visa applicant's travel history to Australia since the parties' wedding in June 2015:

16. Arrival Date	Depart Date
17. 11 September 2015	4 December 2015
18. 25 February 2016	16 May 2016

19.

20. Prior to the hearings the review applicant provided documents to the Tribunal including, but not limited to:

- Photographs;
- Witness support declarations from Amrita Gillard, Rohini Gillard, Maninder Singh Brar, Sylvia Sujata Kumar;
- Witness support letters from Harminder Kaur Brar, Bharpur Singh Brar, Pritpal Singh, Jasmine Kaur Brar, Ranjit Kaur;
- Written submissions from the representative;
- Relationship statements from the review and visa applicants,
- Statutory declarations and Statement of support from Mrs Veeni Devi;
- Statutory declarations from Mr Parma Siwan;
- Statement from Rohini Gillard;
- Statements from Mr Suresh Kumar;
- Statements from Ms Rawinder Kaur;
- Statements from Ms Loveleen Kaur;
- Statements from Mr Sukpal Singh;
- Death certificate for Mr Sukpal Singh;
- Joint Bank Account Statement from Punjab National Bank (March 2017 to March 2019);
- Australian Taxation Office (ATO) forms for the review applicant in relation to 2018 income year;
- Western Union Money Transfer receipts from Ms Gillard to Mr Singh;
- Viber and WhatsApp call records;
- Receipts and other financial records;
- Travel records;
- Copy of sponsor's superannuation beneficiary form nominating the applicant;
- Copies of card sent between the couple;

- Medical evidence regarding the review applicant.

CONSIDERATION OF CLAIMS AND EVIDENCE

21. The issue in the present case is whether the visa applicant was in a genuine spousal relationship with the review applicant at the time of application and continues to be in a genuine spousal relationship at the time of this decision.
22. In making its findings, the Tribunal has considered the documents contained in the Department and Tribunal files and oral evidence provided by the applicant, sponsor and witnesses at the hearing. The Tribunal has also considered the review applicant's response to information put to her during the hearing pursuant to s.359AA of the Act. The Tribunal has the benefit of considerably more evidence than was available to the Department at the time of the delegate's decision.
23. The parties' oral evidence regarding the circumstances in which they met, the development of their relationship and their current living circumstances was consistent. The review applicant was in the view of the Tribunal a credible witness who gave her evidence in a calm, straightforward manner without unnecessary embellishment. The Tribunal is also satisfied the daughter of the review applicant, Ms Amrit Gillard, gave her oral evidence in a sincere and genuine manner, as did the brother of the visa applicant, Mr Maninder Singh. The Tribunal found the oral evidence provided by the visa applicant's sister, Ms Loveleen Kaur, and a neighbour, Ms Rawinder Singh was less convincing as their responses appeared somewhat prepared and limited in scope.
24. **The s.376 Certificate**
25. During the hearing the Tribunal made the review applicant aware that the Department had issued a Certificate under s.376 of the Act over certain documents on the Departmental file. The Tribunal explained that the documents involved were records from the site visit conducted by immigration officials to the visa applicant's home village in November 2016 and that the Department stated that it was not in the public interest that these documents be released, as doing so could reveal confidential departmental investigated methods used to detect breaches of the law. The Tribunal sought comments or submissions from the review applicant and her representative with respect to the validity of this certificate and briefly adjourned the proceedings in order to give them the opportunity to consider this issue.
26. Following the brief adjournment the review applicant indicated she would rely on submissions made by her representative. The representative submitted that whilst a release of the documents may disclose the methodology used by the Department it was nonetheless in the review applicant's interests that the documents be released in order to shed light on this methodology, as this would allow for further possible comments with regard to conclusions reached by the Department from the results of the site visit.

27. The Tribunal acknowledged the representatives submissions but told the review applicant that it was satisfied that the s.376 Certificate was valid, as the Tribunal is satisfied that it is in the public interest that investigations undertaken by officers of the Department not be compromised through the specific methodology of their investigations being disclosed. Further to this the Tribunal explained to the review applicant that the action of a valid s.376 Certificate gives discretion to the Tribunal as to whether the identified documents could be released and that it would in this instance exercise the authority given to it and not release the actual documents specified in the s.376 Certificate.
28. The Tribunal explained to the review applicant that it would however put information from the record of the site visit, which the Tribunal considered relevant to the issues under review in the present case, to her in a procedurally appropriate way during the course of the hearing.
29. **Particulars of information put to the review applicant pursuant to s.359AA of the Act**
30. The Tribunal put particulars of information, from documents on the Department's file which are not consistent with information contained in documents the parties have provided with the review application and oral evidence provided during the hearing, to the review applicant pursuant to s.359AA of the Act, after first explaining to her that this information would, subject to her comment and response, provide the reason, or part of the reason, for affirming the decision under review. The Tribunal explained to the applicant that she could request time to consider her response and that the Tribunal would consider any such request.
31. The particulars of information put to the applicant were that statutory declarations provided to the Tribunal with the review application, as well as the oral evidence provided during the hearing, claim that an explanation for unfavourable information gained during the Department's site visit to the visa applicant's home and village on 7 November 2016 is that the immigration officials spoke in Hindi, which was not the first language of Mr Singh's father, sister and some other people who were interviewed. Whereas the interview notes pertaining to the Department's site visit indicate the language spoken during the site visit was Punjabi. The Tribunal also put to the review applicant that whilst the language difficulties were highlighted in recent documents, there was no reference to any language related difficulties in the statements from the visa applicant and his sister, which were provided in response to the natural justice letter sent to him by the Department in March 2017 regarding issues arising from the site visit.
32. The Tribunal explained to the review applicant that this information is relevant because to prefer the evidence which the parties have provided, which claims that questions were put to the visa applicant's father, sister and other people by the immigration officials during the site visit were in the Hindi language, the Tribunal would have to find the Department's record of the site visit contains incorrect information.
33. The Tribunal explained to the review applicant that this also applies to claims contained in the documents she had provided, which claim the visa applicant's father did not state that the age gap between her and the visa applicant "*did not matter as the marriage was only arranged for the purpose of obtaining permanent residency*" and that the visa applicant's sister had, contrary to the Department's site visit notes, told the immigration officials that the person in the photograph she was shown was her "*sister in law, Nalini*".
34. The Tribunal explained that if it were to find information in the Department's records from the site visit were correct, the Tribunal would have concerns regarding the reliability of evidence provided in support of the claims about issues arising from the Department's site visit 2016.

35. The Tribunal explained that given the amount of evidence that has been provided in relation to this issue, in the event the Tribunal determined the claims about language difficulties during the site visit was unreliable, it may also give rise to the overall unreliability of evidence provided in support of the claim that the parties are in a genuine relationship. The Tribunal explained that if it is not satisfied that the parties are in a genuine and continuing relationship, it will find the visa applicant does not meet an essential criterion for the grant of a Partner visa and it will affirm the decision to refuse his application for a Partner visa.
36. After a brief adjournment to consult her representative, the visa applicant requested further time to consider her response. The Tribunal agreed to this request and told her it would consider her response and any other further evidence or arguments she would like to put forward in support of the visa application that were received up until 8 May 2019.
37. On 8 May 2019 the Tribunal received a response from the review applicant which included written submissions from the representative and a written statement from the visa applicant. In this response the representative submits that the contradictions between the site visit notes and the testimony of the witnesses are not a sound basis for a finding the marriage relationship is not genuine for three reasons. The representative contends that the Tribunal cannot be positively satisfied that the site visit notes are an entirely accurate record of what transpired during the site visit. Further to this the representative contends that if the witnesses are not considered to be witnesses of truth because it has not been proven that the site visit notes are inaccurate, then = the Tribunal cannot reasonably reject the totality of evidence in support of the marriage relationship on account of the concern arising from the site visit which are particularised by the Tribunal pursuant to s.359AA of the Act. It is the latter contention that the Tribunal considers to have some merit.
38. In support of these contentions, the representative points out that the site visit notes are a summary and not an *'incontrovertible record of the entirety of what was said at the site visit or the language /s used during the site visit'*. The Tribunal accepts this contention, but is not satisfied that it and the possibility of some mistakes or inaccuracies in the site visit notes can plausibly explain why a fundamental issue such as which language the interview was conducted in would be inaccurately recorded by the Australian immigration officials. The Tribunal accepts it is not in a position to make *'a positive finding that the site visit notes are a complete, entirely accurate account of the site visit without any missing details or information'*, but is not satisfied that such a finding is *'required for the Tribunal to be satisfied that several witnesses are lying about the languages spoken'*. The Tribunal is required to determine the weight accorded to the evidence before it and this requires consideration of whether there is a reason to prefer the Department's records over the evidence provided by a number of witnesses in this matter.
39. The visa applicant's statement claims that no reference was made about language difficulties in his response to a natural justice letter sent to him by the delegate, which highlighted a range of concerns arising from the site visit, because he was unaware the site visit notes stated the interviews were conducted in Hindi. The Tribunal accepts this may have been the case, but can see no plausible reason why the visa applicant was not more proactive with regard to highlighting the language difficulties he and other witnesses claim so affected their responses to questions put to them during the site visit.
40. With regard to the evidence of Sukpal Singh and Loveleen Kaur the representative concedes it was of a different nature to that provided by other witnesses, as it is in direct contradiction to the notes recorded of the site visit. The Tribunal acknowledges that there is a clear reason why Mr Singh has not provided further evidence with respect to this issue, beyond a written statement in March 2018 where he directly denies statements attributed to him by the Australian immigration officials. The Tribunal acknowledges the claimed communication difficulties may have contributed to Mr Singh responding in the manner he did, but the

Tribunal has ongoing concern as to the weight that can be accorded to Mr Singh's evidence in relation to this issue.

41. The Tribunal accepts the representative's contention that the contradictions in Ms Loveleen Kaur's reported responses during the site visit cannot be conclusively resolved and in light of this her reliability as a witness is not something the Tribunal is satisfied it can rely upon. In forming this view, the Tribunal was influenced by the non-spontaneous and non-elaborative manner in which she provided oral evidence during the hearing.
42. Whilst having formed the view that the evidence of Sukpal Singh and Loveleen Kaur cannot be preferred over the site visit record, the Tribunal does consider there is merit to the submission that it is not appropriate to reject the totality of evidence in support of the marriage relationship on account of concern as to whether a number of witnesses provided evidence that either displayed a lack of knowledge of the review applicant or casts doubt on the visa applicant's incentive for entering into a marriage with the review applicant. In forming this view, the Tribunal acknowledges the need to give genuine consideration to the totality of the evidence and that concern about the reliability of certain evidence does not necessarily so "poison the well" that no corroborating evidence could be accepted.¹

Whether the parties are in a spouse or de facto relationship

43. Clause 309.211(2) and cl.309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
44. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP*[2017] FCAFC 206.
45. In *Re MILGEA and Dhillon* [1990] FCA 144, the Federal Court stated "people enter marriages with a variety of purposes and motives, hopes and anticipations, so that it is not possible to classify some purposes etc. as according to what may be described as 'community expectations'. It is not necessarily inconsistent with a genuine marriage relationship that it was entered into by one or both parties with a view to material benefit or advancement, as for example with the hope of becoming eligible to reside in a particular country. The true test, we would suggest the only test, is whether at the time at which the matter has to be decided it can be said that the parties have a mutual commitment to a shared life as husband and wife to the exclusion of others".

Are the parties validly married?

46. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship.

¹*DAO16 v Minister for Immigration and Border Protection* [2018] FCAFC

47. The couple registered their marriage with the Indian government authorities on 3 June 2015. A certificate of marriage was submitted to the Department. The Tribunal has no reason to doubt the validity of this document.
48. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

49. The financial aspects of the relationship

50. Joint ownership of real estate or other major assets

51. The parties gave evidence they have no shared real estate. They reside in different countries and do not have major investment assets held either jointly or singularly. The review applicant owns a residential property in Goulburn, NSW. The parties do hold a joint account in an Indian financial institution and whilst I was not entirely convinced as to the reason they opened this account, the Tribunal has placed some weight upon this factor.

52. Joint liabilities

53. The review applicant gave evidence she and the visa applicant do not have any shared liabilities.

54. The extent of any pooling of financial resources, especially in relation to major financial commitments

55. There is no evidence to support a contention that the parties are pooling their financial resources in relation to any major financial commitments. The tribunal does however accept that they have pooled funds, perhaps not on an equal basis, towards payment of expenses associated with travel they have undertaken together within Australia, India and Thailand.

56. Whether one person in the relationship owes any legal obligation in respect of the other

57. There is no indication that either the parties have any legal obligations with respect to each other, beyond those inherent in a valid marriage.

58. The basis of any sharing of day-to-day household expenses

59. The tribunal accepts the review applicant remits funds to the visa applicant to supplement his own income upon a regular basis. The tribunal accepts these remitted funds are put towards meeting the visa applicant's regular living expenses. The tribunal considers reasonable the review applicant's explanation that as she is in a significantly better economic situation, given the disparity in the Australian and Indian economies, she is in a position to support the visa applicant financially and that she does so out of her commitment to the marriage.

60. Assessment of the financial aspects of the parties' relationship

61. The Tribunal accepts the financial aspects of the parties' relationship reflect the circumstances where they reside in separate countries and have not to date had the opportunity to significantly merge their financial affairs. The Tribunal has not placed significant weight on this as it is by no means unique in circumstances where a person is applying for a Subclass 309 visa. Accordingly, the Tribunal has not drawn an adverse

inference from the parties' evidence that they have no shared assets of any significance, nor joint liabilities or legal obligations to each other. The Tribunal accepts the visa applicant receives some financial support from the review applicant, which the visa applicant puts towards his regular living costs and costs associated with the parties time spent together.

62. The Tribunal has considered all of the evidence that is currently available and is satisfied that the financial aspects of the parties' relationship are consistent with those of a couple in a genuine and continuing relationship, where they reside in different countries and one person has significantly more financial resources than the other.

63. The nature of the household

64. Joint responsibility for the care and support of children

65. The parties have made no claim that they share responsibility for the care and support of children.

66. The living arrangements of the persons

67. The Tribunal accepts that the parties have shared a household in Australia between September 2015 and December 2015, and February 2016 and May 2016. Further to this the Tribunal accepts the parties have shared a household together in periods the review applicant has travelled to India since their marriage in 2015 and also during the trip they both made to Thailand at the time of the review applicant's 50th birthday in 2018.

68. The tribunal considers the parties have a viable plan to reside together in the residential property owned by the review applicant in Goulburn, NSW until such time as they may make decisions about their future residential intentions elsewhere in Australia.

69. Sharing of the responsibility for housework

70. The tribunal does not consider this a particularly relevant aspect of the parties' relationship to assess, given they currently reside in different countries. The tribunal notes that they have shared responsibility for domestic tasks during periods they have lived together since 2015, but has not placed significant weight on this factor.

71. Assessment of the nature of the parties' household arrangements

72. As the visa applicant and review applicant have not as yet established a stable household together and do not have shared responsibility for the care of children, this aspect of their relationship does not clearly support the contention they are in a genuine spousal relationship. However, given the circumstance identified elsewhere in this decision, namely that this is an application for a Subclass 309 Partner visa, where the parties at the moment reside in different countries, the Tribunal has not drawn an adverse inference from this. Given the parties have managed to spend over seven months in each other's company over the period since their marriage in 2015, the Tribunal is satisfied this period does give some support to the contention they have a mutual commitment to a shared life together in a genuine and continuing relationship.

73. The social aspects of the relationship

74. Whether the persons represent themselves to other people as being in a married relationship with each other

75. The review applicant has nominated the visa applicant as one of three beneficiaries in her superannuation policy, which at present holds funds of around \$215,000. They have also registered their marriage with the Indian authorities.

76. The opinion of the persons' friends and acquaintances about the nature of the relationship

77. Whilst the Tribunal has concern as to the reliability of some of the evidence provided by relatives and other witnesses, which is discussed elsewhere in this decision, this concern does not extend to the opinions provided by relatives about the parties' relationship. The tribunal accepts the parties' relationship is supported by relatives from both families and in relation to this I have placed significant weight upon the oral evidence provided by Ms Amrit Gillard, the daughter of the applicant and Mr Maninder Singh, the brother of the visa applicant.

78. The basis on which the persons' plan and undertake joint social activities

79. The parties gave consistent evidence that they have a compatible lifestyle, which does not involve smoking, excessive alcohol use or 'partying'. To this extent, they claim they have enjoyed time together at home and also time spent visiting close relatives during periods the visa applicant has spent in Australia since the marriage. The tribunal accepts this claim and notes the photographic evidence provided in support of the visa and review applications shows the parties together and with relatives in Australia, India and also during the trip to Thailand to celebrate the review applicant's birthday in 2018.

80. Assessment of the social aspects of the parties' relationship

81. In the view of the Tribunal the nature of the social aspects of the parties' relationship provide support to the contention they are in a genuine and continuing spousal relationship.

82. The nature of the persons' commitment to each other

83. In this matter the parties are in an arranged marriage, initiated by the review applicant's wish to find a suitable man to share her life with. The tribunal accepts the review applicant had confidence in the recommendation made by her friend, Mr Maninder Singh with respect to the potential suitability of his brother, the visa applicant as a prospective husband. The parties gave consistent evidence that after an initial introduction they communicated by social media and felt comfortable with each other and formed the view they held compatible life goals. They have communicated regularly since their marriage and between them undertaken numerous trips to spend time in each other's company.

84. The Tribunal considers the parties description of the circumstances whereby they met and their relationship developed to be plausible, especially within a cultural context where it is not unusual to have the involvement of a mature age woman facilitating the meeting as an informal marriage broker.

85. The duration of the relationship

86. The parties have now been in a committed relationship for over four years and the Tribunal has placed some weight on this factor.

87. The degree of companionship and emotional support that the persons draw from each other

88. The review applicant gave evidence she and the sponsor have a close and loving relationship. The Tribunal accepts this claim. The parties gave evidence they communicate on a daily basis by telephone and social media. The tribunal accepts this claim.

89. *Whether the persons see the relationship as a long-term one*

90. The parties gave evidence they have compatible life goals. The Tribunal accepts the parties see their relationship as long term.

91. *Assessment of the nature of the persons' commitment to each other*

92. The Tribunal is satisfied this aspect of the parties' relationship provides support to the contention that they are in a genuine and continuing spousal relationship.

93. *Conclusions on spouse criteria*

94. As has been noted elsewhere in this decision, the review applicant presented as a very credible witness and with the exception of her reiterating claims about language difficulties in the site visit conducted by Australian immigration officials to the visa applicant's home village, I am satisfied weight can be given to her oral evidence. The review applicant has provided reasonable and plausible reasons for initiating and entering into an arranged marriage with the visa applicant. Her evidence as to the financial, social and commitment aspects of the parties' relationship is also credible, as are the anticipated household arrangements of the parties in Australia, should the visa be approved. On the basis of the totality of the evidence available to me I am satisfied the review applicant is committed to a long-term exclusive relationship with the visa applicant.

95. The parties have had significantly more contact in the period since the delegate refused the visa. Their relationship has now endured for over four years and in that time they have spent a cumulative period of between seven and eight months together. The visa applicant was able to discuss his relationship with the review applicant in a manner which displayed insight into her character and demonstrated they have discussed their future hopes and aspirations for a shared life in Australia.

96. The review applicant's daughter, Ms Amrita Gillard, was to the best of my assessment a credible witness who has her mother's best interests as a paramount concern. She gave clear evidence that her mother and the visa applicant are in a committed, emotionally supportive relationship with no indication of the mother being exploited for immigration purposes.

97. The Tribunal notes there is no evidence to suggest either of the parties is in a relationship with a third party. Within the context where the parties reside in different countries, I consider the financial, household, commitment and social aspects of the parties' relationship are indicative of a couple in a spousal relationship. Consistent with *Dhillon*, I consider that the relevant test in this matter is whether at the time of application and the time of this decision, it can be said that the parties had and have a mutual commitment to a shared life as husband and wife to the exclusion of others. Notwithstanding the concern about certain evidence before the Tribunal that may infer the visa applicant has a clear wish to migrate to Australia, I am satisfied the evidence demonstrates such a commitment.

98. Having regard to all the circumstances of this relationship, the Tribunal is satisfied that the parties committed to their relationship in April 2015 and subsequently registered their marriage with the Indian authorities in June 2015. The Tribunal is satisfied that the review and visa applicants are in a genuine and continuing relationship, that they have a mutual

commitment to a shared life to the exclusion of all others, and that they live together, or not separately and apart, on a permanent basis.

99. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
100. Therefore, the visa applicant meets cl.309.211 and cl.309.221.
101. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

102. The Tribunal remits the application for a Partner (Provisional) (Class UF) visa for reconsideration, with the direction that the visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
 - cl.309.211 of Schedule 2 to the Regulations
 - cl.309.221 of Schedule 2 to the Regulations.

David Barker
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).